

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

VAN JENKINS #172475,

Plaintiff,

NO. 5:14-cv-11812

v

HON. JUDITH E. LEVY

MICHIGAN DEPARTMENT
OF CORRECTIONS, *et al.*,

MAG. PAUL J. KOMIVES

Defendants.

Van Jenkins #172475

In Pro Per

G. Robert Cotton Correctional Facility
3500 N. Elm Road
Jackson, MI 49201

Kevin R. Himebaugh (P53374)

Assistant Attorney General

Attorney for MDOC Defendants

Michigan Department of Attorney General

Corrections Division

P.O. Box 30217

Lansing, MI 48909

(517) 335-7021

**MDOC DEFENDANTS' MOTION TO QUASH
PLAINTIFF'S SUBPOENAS**

Now come MDOC Defendants, by counsel, under Fed. R. Civ. P. 45(d)(3)(A)(i), (iii), and (iv), and move this Court to quash the subpoenas served by Plaintiff, as discussed further in the accompanying brief.

Respectfully submitted,

Bill Schuette

Attorney General

s/ Kevin R. Himebaugh

Assistant Attorney General

Corrections Division

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Lansing, MI 48909

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(517) 335-7021

[P53374]

Date: September 23, 2014

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**BRIEF IN SUPPORT OF MDOC DEFENDANTS' MOTION
TO QUASH PLAINTIFF'S SUBPOENAS**

This is a civil rights action brought *pro se* under 42 U.S.C. § 1983 by Van Jenkins, a prisoner confined by the Michigan Department of Corrections. Several of the defendants have moved for summary judgment. Some of the defendants have not yet been served.

In the meantime, Plaintiff has served at least three subpoenas on various parties. *See* Exhibit 1 (subpoena directed to Erika Saxton, Probation Agent); Exhibit 2 (subpoena directed to Melody Wallace,

Manager, Litigation Section); and Exhibit 3 (subpoena directed to Adrian Green, Hearing Examiner).

All three subpoenas requested numerous documents and tangible things, and demanded compliance by September 15, 2014. The first subpoena was received around September 10 or 11, 2014 (see date stamp on upper right, plus fax date stamp at top reads Sep-11-2014 12:16). The second subpoena was received in the Office of Legal Affairs on September 12, 2014 (a Friday), and forwarded via e-mail to defense counsel on September 15, 2014 (a Monday). *See* Exhibit 4 (e-mail).

The decision to quash a subpoena is within the sound discretion of a district court. *Ghandi v. Police Dep't of Detroit*, 747 F.2d 338, 354 (6th Cir. 1984). The main reason for quashing the subpoenas is that they did not provide a reasonable time to comply, per Fed. R. Civ. P. 45(d)(3)(A)(i). The subpoenas allowed only one or two business days to produce the documents or formulate objections to Plaintiff's voluminous requests.

The requests are also unduly burdensome under Rule 45(d)(3)(iv) and may require disclosure of privileged or protected matter under Rule 45(d)(3)(iii). But more specific objections cannot be made at this time

because the unreasonable time for compliance imposed by Plaintiff did not leave enough time to thoroughly investigate and research the matter in time to provide timely objections, which “must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served.” Fed. R. Civ. P. 45(d)(2)(B). Consequently, Plaintiff’s subpoenas should be quashed for failure to provide a reasonable time to comply.

CONCLUSION AND RELIEF SOUGHT

For the reasons discussed above, Defendants request that this Court quash Plaintiff’s subpoenas.

Respectfully submitted,

Bill Schuette
Attorney General

s/ Kevin R. Himebaugh
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[P53374]

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Himebaugh\FED Intake\2014-0078369-A Jenkins\Mot & Brf to Quash Subpoenas

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CERTIFICATE OF SERVICE

I certify that on **September 23, 2014**, I electronically filed **MDOC DEFENDANTS' MOTION TO QUASH PLAINTIFF'S SUBPOENAS, BRIEF IN SUPPORT, INDEX OF EXHIBITS, and EXHIBITS 1 through 4**, with the Clerk of the Court using the ECF system and I certify that my secretary, Joleen McQuiston, has mailed by U.S. Postal Service the papers to the following non-ECF participant(s):

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s/ Kevin R. Himebaugh
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